

Assembly Bill No. 2751

CHAPTER 79

An act to amend Sections 98.6, 1019, and 1024.6 of the Labor Code, relating to employment.

[Approved by Governor June 28, 2014. Filed with
Secretary of State June 28, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2751, Roger Hernández. Retaliation.

Existing law prohibits an employer from discharging an employee or in any manner discriminating, retaliating, or taking any adverse action against any employee or applicant for employment because the employee or applicant has engaged in protected conduct, as specified. Existing law provides that an employee who made a bona fide complaint, and was consequently discharged or otherwise suffered an adverse action, is entitled to reinstatement and reimbursement for lost wages. Existing law makes it a misdemeanor for an employer to willfully refuse to reinstate or otherwise restore an employee who is determined by a specified procedure to be eligible for reinstatement. Existing law subjects a person who violates these provisions to a civil penalty of up to \$10,000 per violation.

This bill would require the \$10,000 penalty to be awarded to the employee or employees who suffered the violation.

Existing law prohibits an employer or any other person from engaging in, or directing another person to engage in, an unfair immigration-related practice against a person for the purpose of, or with the intent of, retaliating against any person for exercising a right protected under state labor and employment laws or under a local ordinance applicable to employees, as specified. Existing law defines unfair immigration-related practice to include, among other things, threatening to file or filing a false police report. Existing law creates a rebuttable presumption that an adverse action taken within 90 days of the exercising of a protected right is committed for the purpose of, or with the intent of, retaliation. Existing law authorizes a civil action for equitable relief and damages or penalties, as specified, by an employee or other person who is the subject of an unfair immigration-related practice. Existing law also authorizes a court to order the appropriate government agencies to suspend certain business licenses held by the violating party for prescribed periods based on the number of violations, and requires the court to consider specified circumstances in determining whether a suspension of all licenses is appropriate.

This bill would include in the definition of unfair immigration-related practice the threatening to file or the filing of a false report or complaint with any state or federal agency. The bill would authorize a civil action for

equitable relief and any applicable damages or penalties by an employee or other person who is the subject of an unfair immigration-related practice. The bill would further authorize a court to order, upon application by a party or on its own motion, the appropriate government agencies to suspend certain business licenses held by the violating party for prescribed periods based on the number of violations.

Existing law prohibits an employer from discharging an employee or in any manner discriminating, retaliating, or taking any adverse action against an employee because the employee updates or attempts to update his or her personal information, unless the changes are directly related to the skill set, qualifications, or knowledge required for the job.

This bill would prohibit an employer from discharging or in any manner discriminating, retaliating, or taking any adverse action against an employee because the employee updates or attempts to update personal information based on a lawful change of name, social security number, or federal employment authorization document. The bill would prohibit an employer's compliance with these provisions from serving as the basis for a claim of discrimination, including any disparate treatment claim.

The people of the State of California do enact as follows:

SECTION 1. Section 98.6 of the Labor Code is amended to read:

98.6. (a) A person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee or applicant for employment has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to his or her rights that are under the jurisdiction of the Labor Commissioner, made a written or oral complaint that he or she is owed unpaid wages, or because the employee has initiated any action or notice pursuant to Section 2699, or has testified or is about to testify in a proceeding pursuant to that section, or because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded him or her.

(b) (1) Any employee who is discharged, threatened with discharge, demoted, suspended, retaliated against, subjected to an adverse action, or in any other manner discriminated against in the terms and conditions of his or her employment because the employee engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee has made a bona fide complaint or claim to the division pursuant to this part, or because the employee has initiated any action or notice pursuant to Section 2699 shall be entitled to

reinstatement and reimbursement for lost wages and work benefits caused by those acts of the employer.

(2) An employer who willfully refuses to hire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor.

(3) In addition to other remedies available, an employer who violates this section is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation of this section, to be awarded to the employee or employees who suffered the violation.

(c) (1) Any applicant for employment who is refused employment, who is not selected for a training program leading to employment, or who in any other manner is discriminated against in the terms and conditions of any offer of employment because the applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the applicant has made a bona fide complaint or claim to the division pursuant to this part, or because the employee has initiated any action or notice pursuant to Section 2699 shall be entitled to employment and reimbursement for lost wages and work benefits caused by the acts of the prospective employer.

(2) This subdivision shall not be construed to invalidate any collective bargaining agreement that requires an applicant for a position that is subject to the collective bargaining agreement to sign a contract that protects either or both of the following as specified in subparagraphs (A) and (B), nor shall this subdivision be construed to invalidate any employer requirement of an applicant for a position that is not subject to a collective bargaining agreement to sign an employment contract that protects either or both of the following:

(A) An employer against any conduct that is actually in direct conflict with the essential enterprise-related interests of the employer and where breach of that contract would actually constitute a material and substantial disruption of the employer's operation.

(B) A firefighter against any disease that is presumed to arise in the course and scope of employment, by limiting his or her consumption of tobacco products on and off the job.

(d) The provisions of this section creating new actions or remedies that are effective on January 1, 2002, to employees or applicants for employment do not apply to any state or local law enforcement agency, any religious association or corporation specified in subdivision (d) of Section 12926 of the Government Code, except as provided in Section 12926.2 of the Government Code, or any person described in Section 1070 of the Evidence Code.

SEC. 2. Section 1019 of the Labor Code is amended to read:

1019. (a) It shall be unlawful for an employer or any other person or entity to engage in, or to direct another person or entity to engage in, unfair immigration-related practices against any person for the purpose of, or with

the intent of, retaliating against any person for exercising any right protected under this code or by any local ordinance applicable to employees. Exercising a right protected by this code or local ordinance includes the following:

(1) Filing a complaint or informing any person of an employer's or other party's alleged violation of this code or local ordinance, so long as the complaint or disclosure is made in good faith.

(2) Seeking information regarding whether an employer or other party is in compliance with this code or local ordinance.

(3) Informing a person of his or her potential rights and remedies under this code or local ordinance, and assisting him or her in asserting those rights.

(b) (1) As used in this chapter, "unfair immigration-related practice" means any of the following practices, when undertaken for the retaliatory purposes prohibited by subdivision (a):

(A) Requesting more or different documents than are required under Section 1324a(b) of Title 8 of the United States Code, or a refusal to honor documents tendered pursuant to that section that on their face reasonably appear to be genuine.

(B) Using the federal E-Verify system to check the employment authorization status of a person at a time or in a manner not required under Section 1324a(b) of Title 8 of the United States Code, or not authorized under any memorandum of understanding governing the use of the federal E-Verify system.

(C) Threatening to file or the filing of a false police report, or a false report or complaint with any state or federal agency.

(D) Threatening to contact or contacting immigration authorities.

(2) "Unfair immigration-related practice" does not include conduct undertaken at the express and specific direction or request of the federal government.

(c) Engaging in an unfair immigration-related practice against a person within 90 days of the person's exercise of rights protected under this code or local ordinance applicable to employees shall raise a rebuttable presumption of having done so in retaliation for the exercise of those rights.

(d) (1) An employee or other person who is the subject of an unfair immigration-related practice prohibited by this section, or a representative of that employee or person, may bring a civil action for equitable relief and any applicable damages or penalties.

(2) Upon a finding by a court of applicable jurisdiction of a violation this section, upon application by a party or on its own motion, a court may do the following:

(A) For a first violation, order the appropriate government agencies to suspend all licenses that are held by the violating party for a period of up to 14 days. On receipt of the court's order and notwithstanding any other law, the appropriate agencies shall suspend the licenses according to the court's order.

(B) For a second violation, order the appropriate government agencies to suspend all licenses that are held by the violating party for a period of up to 30 days. On receipt of the court's order and notwithstanding any other law, the appropriate agencies shall immediately suspend the licenses.

(C) For a third or subsequent violation, order the appropriate government agencies to suspend for a period of up to 90 days all licenses that are held by the violating party. On receipt of the court's order and notwithstanding any other law, the appropriate agencies shall immediately suspend the licenses.

(3) In determining whether a suspension of all licenses is appropriate under this subdivision, the court shall consider whether the employer knowingly committed an unfair immigration-related practice, the good faith efforts of the employer to resolve any alleged unfair immigration-related practice after receiving notice of the violations, as well as the harm other employees of the employer, or employees of other employers on a multiemployer job site, will suffer as a result of the suspension of all licenses.

(4) An employee or other person who is the subject of an unfair immigration-related practice prohibited by this section, and who prevails in an action authorized by this section, shall recover his or her reasonable attorney's fees and costs, including any expert witness costs.

(e) As used in this chapter:

(1) "License" means any agency permit, certificate, approval, registration, or charter that is required by law and that is issued by any agency for the purposes of operating a business in this state and that is specific to the business location or locations where the unfair immigration-related practice occurred. "License" does not include a professional license.

(2) "Violation" means each incident when an unfair immigration-related practice was committed, without reference to the number of employees involved in the incident.

SEC. 3. Section 1024.6 of the Labor Code is amended to read:

1024.6. An employer may not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against an employee because the employee updates or attempts to update his or her personal information based on a lawful change of name, social security number, or federal employment authorization document. An employer's compliance with this section shall not serve as the basis for a claim of discrimination, including any disparate treatment claim.